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Report of the Working Group on the Universal Periodic Review*

Mexico

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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Response of Mexico to the recommendations of the universal periodic review mechanism of the Human Rights Council

1. As a reflection of its commitment to the international human rights system and in the belief that the universal periodic review is a valuable tool for promoting cooperation in this area, Mexico submits its replies to the recommendations, which are the product of extensive consultations within the federal executive and with the legislature and judiciary.

2. Discussions were held between civil society organizations and the Government, in which views on the concerns and priorities contained in the recommendations were shared. The Government of Mexico considers the participation of civil society organizations to be essential in the planning and implementation of human rights policies and reiterates its commitment to maintaining a dialogue in order to follow up on international recommendations.

International human rights obligations

3. Recommendation 148.1 is accepted.

4. Mexico accepts recommendation 148.2 on the understanding that the ratification of the Optional Protocol is subject to the procedure laid down in the Treaties Adoption Act and the completion of the necessary consultations with the relevant institutions. The national legal framework was reformed in 2011 so that the rights enshrined in international treaties to which Mexico is a State party enjoy constitutional status. In that regard, all authorities must interpret the human rights contained in the Constitution and in international treaties to which Mexico is a State party according to the *pro homine* principle, favouring at all times the standard which affords the most protection. This approach requires a thorough analysis of the legislative impact of ratifying and subsequently implementing human rights treaties.

5. Mexico accepts recommendations 148.3 and 148.8. The relevant institutions are currently reviewing legislation in order to ascertain whether the treaties referred to in these recommendations can be implemented in the light of the national legal framework.[1]

6. Mexico partially accepts recommendation 148.4. On 4 February 2014, the Senate approved the withdrawal of the reservation to article 22.4 of the Convention in order to guarantee the right of foreign nationals facing expulsion to a hearing.

7. Regarding article 76 of the Convention, Mexico does not recognize the competence of treaty monitoring bodies to consider communications between States, unless that competence is not optional under the respective treaty.

8. Recommendation 148.5 is partially accepted. As to establishing an official register for disappeared persons, the Attorney-General's Office manages a database of missing persons with the support of the Executive Secretariat of the National System for Public Security.[2]

9. Mexico is reviewing its national legal framework in order to align it with its international obligations. The executive sent an initiative to the Senate in October 2013 to reform article 215A, B and C and add a section 215E to the Federal Criminal Code in order to ensure that the criminalization and punishment of the offence of enforced disappearance is in line with the provisions of the Convention.

10. Regarding article 31 of the Convention, Mexico notes, and is considering whether to recognize, the competence of the Committee to receive communications from or on behalf

of individuals, although at present the vast majority of individual complaints of human rights violations are brought before the inter-American human rights system.

11. Regarding article 32 of the Convention, please see response to recommendation 148.4.

12. Mexico is a State party to the four Geneva Conventions and their Additional Protocols I and III, and to the Rome Statute of the International Criminal Court. Mexico assumes all its international humanitarian law obligations at all times, whether during situations of armed conflict or in peacetime. Apart from the broad scope provided for in common article 3 of the Geneva Conventions, the definition of non-international armed conflict contained in the Rome Statute is broader than that contained in Additional Protocol II to the Geneva Conventions. It is therefore not possible to implement recommendation 148.6.

13. Mexico does not accept recommendation 148.7. The provisions of the Convention are not compatible with article 37, section B, paragraph II, of the Mexican Constitution, which provides that Mexican nationality acquired by naturalization shall be withdrawn from persons who reside abroad for five consecutive years. The provisions of the Convention are also incompatible with the Nationality Act, which establishes in its article 20 that foreign nationals who wish to become naturalized Mexican citizens must prove that they have been resident in Mexico for at least the past five years prior to the date of application.

14. Mexico accepts recommendation 148.9 on the understanding that the ratification of the Convention is subject to the procedure laid down in the Treaties Adoption Act and the completion of the necessary consultations with the relevant institutions.[3]

15. Mexico accepts recommendation 148.10 on the understanding that internal consultations on the ratification of the Convention will continue under the Treaties Adoption Act in the light of article 3 of the Constitution and the General Education Act, which provide for the right to education without distinction, exclusion, limitation or discrimination.[4]

Harmonization and strengthening of the regulatory and institutional framework

16. Recommendations 148.11, 148.15, 148.17, 148.19, 148.20, 148.21, 148.22, 148.23, 148.24, 148.25, 148.26, 148.27, 148.28, 148.29, 148.33, 148.35, 148.36, 148.37 and 148.38 are accepted.

17. Recommendations 148.12 and 148.16 are accepted. Between 2010 and 2012, the Mexican Inter-Ministerial Commission on International Humanitarian Law devised a draft bill to amend the Federal Criminal Code in order to align it with the provisions contained in the Rome Statute and other international humanitarian law instruments to which Mexico is a party.

18. Recommendations 148.13, 148.14 and 148.18 are accepted. On 4 March 2014, the President of the Republic enacted the National Code of Criminal Procedure, which will function as a single code for the national territory, thereby ensuring that all criminal proceedings in the country are conducted under the same rules and in accordance with the principles of victim protection, presumption of innocence, reparation of damages and respect for due process.

National Human Rights Programme 2014–2018

19. Recommendations 148.30, 148.31, 148.32 and 148.34 are accepted. The National Human Rights Programme will act as the guiding instrument for consolidating the human rights policy of the State and will incorporate an independent monitoring and follow-up mechanism.

Equality and non-discrimination

Promoting equal rights and non-discrimination

20. Recommendations 148.39, 148.41, 148.46 and 148.47 are accepted.

Gender equality

21. Recommendations 148.40, 148.42, 148.43, 148.44 and 148.45 are accepted. The National Development Plan contains a cross-cutting approach to gender.[5]

Right to life

22. Mexico reaffirms its respect for and protection of the right to life in accordance with article 4 of the American Convention on Human Rights and the interpretative declaration made to that instrument, with reference to the scope of national legislation.[6]

23. The Supreme Court has confirmed the power of the federal entities to legislate in this area, pursuant to the distribution of powers established by the Constitution. It is therefore not possible to implement recommendation 148.48 since uniformity in the various legislations cannot be ensured under the current Federal Pact.

Prevention of torture

24. Recommendations 148.49, 148.50, 148.51, 148.52 and 148.53 are accepted. Mexico is committed to preventing and sanctioning the commission of acts of torture with the aim of eradicating torture completely.[7]

Enforced disappearance

25. Recommendations 148.54, 148.55, 148.56, 148.57, 148.58 and 148.59 are accepted. The Mexican Government is committed to addressing the issue of disappeared persons.[8]

Preventive custody

26. Mexico notes the observations made in relation to the use of *arraigo* (preventive custody) contained in recommendations 148.60, 148.61, 148.62 and 148.63.

27. It is committed to restricting the use of preventive custody to only very exceptional cases as a precautionary measure to protect the higher interest of life, to safeguard the integrity of persons, to protect legal rights or to prevent suspects from evading justice.[9]

28. In February 2014, the Supreme Court found that preventive custody could only be: (a) invoked in cases of organized crime; (b) enacted by the Congress of the Union; (c) applied for by the Federal Prosecution Ministry, and (d) authorized by a federal judge.

29. The Government has pushed for constitutional reform of "*arraigo*" custody in the Chamber of Deputies, with a view to reaffirming the restriction of its use to cases of organized crime and establishing stricter limits and controls in order to significantly reduce its duration and enable human rights protection bodies to monitor its use.[10]

30. The Attorney-General's Office is working to improve the reporting mechanisms for cases involving this precautionary measure and is supported by the Office of the Assistant Attorney-General for Human Rights, which is responsible for addressing all human rights violations, including violations resulting from the use of this measure.[11]

Penal and prison system

31. Recommendations 148.64 and 148.65 are accepted.

Elimination of violence against women

32. Recommendations 148.66, 148.67, 148.68, 148.69, 148.70, 148.71, 148.72, 148.73, 148.74, 148.75, 148.76, 148.77, 148.78, 148.79 and 148.80 are accepted.

Rights of children and adolescents

33. Recommendations 148.81, 148.82 and 148.83 are accepted. The Programme for the Protection and Integral Development of Children contains measures designed to prevent children from falling into situations of risk, as part of a culture of respect for children's rights. An Inter-institutional Strategy for the Care of Children and Adolescents Affected by Organized Crime has also been introduced.

Trafficking in persons

34. Recommendations 148.84, 148.85, 148.86, 148.87, 148.88 and 148.89 are accepted.

Public safety

35. Recommendation 148.90 is accepted. Mexico confirms that the military authorities contribute to public safety on the basis of the national legal framework, and that their actions are subject to review by the federal courts in the event of any human rights violations. Military personnel provide support to the public security authorities without replacing them in their functions and in strict compliance with the law and with full respect for human rights.

36. Steps have been taken to strengthen the citizen relations units found in various departments of the executive branch. The National Development Plan sets out the importance of relations, accountability and transparency with respect to the public.

37. Recommendations 148.91, 148.97, 148.98 and 148.103 are accepted.

Judicial system and criminal justice system

38. Recommendations 148.92, 148.93, 148.94, 148.95, 148.96, 148.99 and 148.100 are accepted. The judiciary is currently implementing the Master Plan for the Implementation

of Criminal Justice Reform with a view to establishing the adversarial criminal justice system within the constitutional time limit.

Strengthening the rule of law

39. Recommendations 148.101, 148.104, 148.105, 148.106, 148.107 and 148.108 are accepted.

Military jurisdiction

40. Mexico accepts recommendation 148.109. In 2012, the Supreme Court declared article 57 of the Code of Military Justice unconstitutional and is currently considering several initiatives to reform the article so that the civil authorities hear cases of alleged human rights offences or violations committed against civilians by members of the armed forces. On 4 February 2014, the Senate approved the withdrawal of Mexico's reservation to the Inter-American Convention on Forced Disappearance of Persons in relation to the military courts.

41. From 2012, the Office of the Military Attorney-General and military courts will no longer hear cases of human rights violations against civilians.

Law enforcement and administration of justice

42. Recommendation 148.110 is accepted. The Federal Justice for Adolescents Act of 2012 enters into force in December 2014. The Supreme Court has issued a "Protocol of Action for those delivering justice in cases affecting children and adolescents".

43. Recommendations 148.102, 148.111 and 148.112 are accepted.

44. Recommendation 148.113 is accepted. Article 2 of the Constitution recognizes the self-determination and autonomy of indigenous peoples, including the application of their legal systems. The Supreme Court has issued a "Protocol of Action for those delivering justice in cases affecting the rights of indigenous persons, peoples and communities".

Protection of family and marriage

45. With regard to recommendation 148.114, the preservation and protection of the family are fundamental to the State of Mexico in accordance with the provisions of article 16 of the Universal Declaration of Human Rights and article 4 of the Mexican Constitution. Mexico thus recognizes and protects the right of every person to marry and found a family. Mexico points out, however, that there is no international standard which defines the characteristics that pertain to the family.

46. Nevertheless, equal rights and the prohibition of discrimination are provided for in article 1 of the Constitution and the international human rights treaties to which Mexico is a party. The Supreme Court has reaffirmed this position by declaring any legislation which undermines people's right to self-determination and the free development of their personality to be unconstitutional and by establishing that standards which conceptualize marriage in a discriminatory manner are equally unconstitutional.

47. The State of Mexico is therefore not in a position to implement this recommendation.

Freedom of religion

48. Recommendation 148.115 is accepted.

Human rights defenders and journalists

49. Recommendations 148.116, 148.120, 148.121, 148.124, 148.125, 148.126, 148.127, 148.128, 148.129, 148.130, 148.131, 148.132, 148.133, 148.134, 148.135, 148.136 and 148.137 are accepted.[12]

Strengthening protection mechanisms for human rights defenders and journalists

50. Recommendations 148.117, 148.118, 148.119, 148.122 and 148.123 are accepted. The Human Rights Defenders and Journalists Protection Act provides for a specialized fund designed to mobilize additional funding for the implementation and functioning of prevention measures, preventive measures, protection measures and urgent protection measures, which safeguard the life, integrity, liberty and security of persons who are at risk as a result of their defence or promotion of human rights, their exercise of freedom of expression and journalism, or their performance of any other activities referred to in the act implementing that mechanism.

Women's rights

51. Recommendation 148.138 is accepted. In October 2013, the President sent a reform initiative to Congress, which set forth the obligation for political parties to ensure that 50 per cent of all Congress candidates are women.[13]

52. Recommendation 148.139 is accepted.

Combating poverty

53. Recommendations 148.140, 148.141 and 148.149 are accepted. Federal Government spending on social development for 2014 has increased by 14.7 per cent compared with 2013, which in turn was 13 per cent higher in comparison with 2012.

54. Recommendations 148.142, 148.143, 148.147 and 148.148 are accepted. The eradication of extreme poverty is a priority for Mexico, which has introduced a social policy focused on building a rights-based society. Programmes such as the National Crusade against Hunger have also been launched in an effort to tackle the problems faced by persons in situations of extreme poverty or undernourishment.

Assistance for vulnerable groups

55. Recommendations 148.144, 148.145, 148.146, 148.150, 148.152 and 148.156 are accepted.

Right to health

Sexual and reproductive health services

56. Recommendations 148.153 and 148.154 are accepted. Steps have been taken to improve universal access to sexual and reproductive health services, including through the establishment of the Friendly Services for Adolescents, the National System for Basic Health Information and the Comprehensive Health-care System for Adolescents.[14]

Maternal mortality

57. Recommendations 148.155 and 148.157 are accepted.

Right to education

58. Recommendations 148.158, 148.159, 148.160, 148.161, 148.162 and 148.163 are accepted. Pursuant to the constitutional reform of 2013, in September 2013 the reforms to the General Education Act were implemented and the Act establishing the National Institute for Educational Assessment was adopted. These changes, together with the introduction of the Professional Teaching Service, the National Education Assessment System and the Educational Information and Management System, will enable Mexico to consolidate a new high-quality model of education.

Right to housing

59. Recommendation 148.151 is accepted.

Rights of persons with disabilities

60. Recommendations 148.164 and 148.165 are accepted.

Rights of indigenous peoples and Afro-descendants

61. Recommendations 148.166, 148.169 and 148.171 are accepted. A mechanism has been in place since 2013 which fulfils the obligation to consult with indigenous peoples and communities during environmental impact assessments, in accordance with the ILO Indigenous and Tribal Peoples Convention 1989 (No. 169). The Senate is considering an initiative to establish the obligation to promote equal opportunities for indigenous peoples and respect for their rights and full development, through policies designed and implemented in consultation with them. These initiatives seek to secure indigenous peoples' free, prior and informed consent on any matters that might affect them.

62. Recommendations 148.167, 148.168, 148.170 and 148.172 are accepted.

Rights of migrants

63. Recommendations 148.173, 148.174, 148.175 and 148.176 are accepted. At present, the Special Migration Programme is being designed to serve as the basis of State migration policy, which will include activities aimed at strengthening migrants' access to justice and security.[15]

Notes

[1] See response to recommendation 148.2.
[2] The database resulted from an agreement concluded between prosecutors and attorney-generals at the National Conference of Judicial Officers.
[3] See response to recommendation 148.2.
[4] See response to recommendation 148.2.
[5] The National Programme for Equality of Opportunities and Non-Discrimination against Women 2013–2018 published in August 2013, sets forth the cross-cutting approach. The programme aims to achieve substantive equality between women and men through gender-responsive planning, programming and budgeting within a framework of full respect for human rights.
[6] At present, 17 federal entities protect life from conception in their local constituencies: Baja California, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Jalisco, Morelos, Nayarit, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí, Sonora, Tamaulipas and Yucatán. The remaining 15 federal entities do not regulate the right to life from conception: Aguascalientes, Baja California Sur, Campeche, Coahuila, Distrito Federal, Guerrero, Hidalgo, Mexico State, Michoacán, Nuevo León, Sinaloa, Tabasco, Tlaxcala, Veracruz and Zacatecas.
[7] See Mexican national report, paras. 82–85, submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (A/HRC/WG.6/17/MEX/1).
[8] See A/HRC/WG.6/17/MEX/1, paras. 86–91.
[9] Statistical data supports this statement: in 2011 the Attorney-General's Office applied this protective measure in 2,069 cases; in 2012 in 1,166 cases, and in 2013 in only 630 cases.
[10] The national Code of Criminal Procedure, adopted on 4 March 2014, regulates the new non-custodial precautionary measures and favours their application over measures that restrict the freedom of individuals.
[11] In order to ensure full respect for the lawfulness of detention at all times, the Attorney-General's Office has adopted legal instruments which provide for human rights training for public officials and promote compliance with and awareness of human rights.
[12] See A/HRC/WG.6/17/MEX/1, paras. 92–97.
[13] The initiative proposes to reform the Federal Code of Electoral Institutions and Procedures.
[14] These measures also include the official Mexican standard NOM-009-SSA2-2013 on school health promotion, which encourages the awareness and practice of responsible and safe sex.
[15] It is envisaged that these activities will involve the use of differentiated standards for the protection of children, adolescents, women, victims of crime and asylum seekers.